

REMARKS

Applicant respectfully requests consideration of this application. The foregoing amendments and the following arguments are provided to impart precision to the claims, by more particularly pointing out the invention, rather than to avoid prior art.

Office Action Rejections Summary

Claims 1, 5 – 6, 8, 24, and 27 – 32 have been rejected under 35 U.S.C. §102(e) as being anticipated by Duffy, U.S. Patent No. 6,048,332 (hereinafter “Duffy”). Claims 2, 3, 10, and 11 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Duffy.

Status of Claims

Claims 1 – 6, 8, 10, 11, 24, and 33 – 36 are pending in this application. Claims 1, 8, 10, 11, and 24 have been amended. New claims 33 – 36 have been added. The amended and new claims are supported by the specification and no new matter has been added. Claims 27 – 32 have been canceled. In light of the newly canceled claims, the following remarks pertain to the pending claims.

35 U.S.C. § 102 (e) Rejections

Claims 1, 5 – 6, 8, and 24, have been rejected under 35 U.S.C. §102(e) as being anticipated by Duffy. Applicant respectfully submits that claims 1, 5 – 6, 8, 24, and 27 – 32 are patentable over Duffy.

Amended independent claim 1 provides:

A method comprising:

injuring a vessel region, said vessel region comprising a bypass vessel adjacent to a primary vessel leading to a target area for blood flow, said primary vessel having an occlusion to blood flow; and

delivering an arteriogenic factor to said bypass vessel in a medically effective manner to structurally enlarge an existing blood vessel. (emphasis added)

Amended independent claim 24 provides:

A method of structurally enlarging a bypass vessel adjacent to a primary vessel, said method comprising:
injuring said bypass vessel; and
advancing a distal portion of a catheter to said bypass vessel; and
delivering an arteriogenic factor in a medically effective manner to said bypass vessel via said catheter.

(emphasis added)

Duffy discloses a drug delivery catheter having a balloon with concavities in the balloon wall with apertures for through which fluid exits the balloon. In particular, Duffy includes the following disclosure:

In one practice, the catheter is passed into the body lumen over a guidewire 8. The guidewire 8 is adapted in length to reach the site of the endoluminal lesion to be treated. . . . The balloon 20 can be inflated after it is positioned at a treatment site within a body lumen. Pre-inflating the balloon 20 increases its profile and makes it more difficult to direct to the treatment area.

(Duffy, col. 7, lines 53 – 55; col. 8, lines 4 – 8, and FIG. 1).

As such, the catheter in Duffy appears to be limited in its use for advancement to the vessel containing the lesion. Nothing in Duffy discloses advancing the catheter to a vessel other than the vessel containing the lesion for treatment.

In contrast, amended independent claim 1 includes the limitation of “delivering an arteriogenic factor to said bypass vessel in a medically effective manner to structurally enlarge an existing blood vessel” and amended independent claim 24 contains the limitation of “delivering an arteriogenic factor in a medically effective manner to said bypass vessel via said catheter.” As such, claims 1 and 24 are patentable over Duffy under 35 U.S.C. §102(e) and applicant requests removal of the rejection.

Claims 5, 6, and 8 each depend either directly or indirectly from independent claim 1 and thus include the limitation of “delivering an arteriogenic factor to said bypass vessel in a medically effective manner to structurally enlarge an existing blood vessel.”

Claims 33 – 36 each depend directly from independent claim 24 and thus include the limitation of “delivering an arteriogenic factor in a medically effective manner to said bypass vessel via said catheter.” As such, claims 5, 6, 8, and 33 – 36 are also patentable over Duffy under 35 U.S.C. §102(e).

35 U.S.C. § 103 (a) Rejections

Claims 2, 3, 10, and 11 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Duffy. Applicant respectfully submits that claims 2, 3, 10, and 11 are patentable over Duffy. Claims 2, 3, 10, and 11 each depend from independent claim 1, and thus include the limitation of “delivering an arteriogenic factor to said bypass vessel in a medically effective manner to structurally enlarge an existing blood vessel.” As discussed above, nothing in Duffy discloses this limitation. Applicant respectfully submits that it would not be obvious in Duffy to deliver to injure an arteriogenic factor to a bypass vessel, as all the methods in Duffy are limited to treating the site of an endoluminal lesion. Moreover, there is no figure in Duffy that shows a bypass vessel being treated, separate from a primary vessel containing the endoluminal lesion. As such, applicant respectfully submits that claim 1 is patentable over Duffy under 35 U.S.C. §103(a). Accordingly, dependent claims 2, 3, 10, and 11 are also patentable over Duffy under 35 U.S.C. §103(a).

In conclusion, Applicant respectfully submits that in view of the amendments and arguments set forth herein, the applicable rejections have been overcome. If the

allowance of these claims could be facilitated by a telephone conference, the Examiner is invited to contact Suk Lee at (408) 720-8300. If there are any additional charges, please charge our Deposit Account No. 02-2666.

Respectfully submitted,

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